IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 726 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO. LTD.

Versus

BABUBHAI JIVANBHAI DENGADA

Appearance:

MS LILU K BHAYA for Petitioner

MS MAMTA R VYAS for Respondent No. 1

MR DIVYESH SEJPAL for Respondent No. 2 & 3

RULE SERVED for Respondent No. 4

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/04/2001

ORAL JUDGEMENT

Heard Ms. Lilu K. Bhaya learned advocate for the appellant; Ms. Mamta R. Vyas learned advocate for

respondent no.1 and Mr. Divyesh Saijpal learned advocate for respondent nos. 2 and 3. Respondent no.4 served.

2. This is an appeal under Section 173 of the Motor Vehicle Act,1988 (for short "the Act") at the instance of original opponent no.4 - National Insurance Co. Ltd. Insurer of the offending vehicle which was involved in the accident in question.

3. The appellant herein has challenged the order passed by the M.A.C.Tribunal, Bhavnagar dated 14.12.2000 in the proceedings of M.A.C.Petition No. 387 of 2000 under Section 140 of the Act.

That the impugned award passed under Section 140 of the Act being award in the nature of interim award and subject to adjustment against the award which may be passed in the main petition being M.A.C.Petition No. 387 of 2000 pending before the claim Tribunal, it would not be just and proper to interfere with the impugned award at this stage of the matter. That no useful purpose would be served by admitting the appeal and keeping it pending at this stage as impugned award is subject to final award to be passed in the pending M.A.C.Petition No. 387 of 2000 before the Tribunal.

The original claimant - respondent no.1 herein shall file an undertaking before the M.A.C.Tribunal, Bhavnagar in the proceedings of M.A.C.Petition No. 387 of 2000 within a period of four weeks from the date of service of this order that claimant shall not abandon the claim petition nor shall withdraw or shall be permitted to be dismissed for default or for any other cause and the claimant shall obtain the decision on merits in the said claim petition.

4. On filing of above stated undertaking by respondent no.1 - original claimant, the amount deposited by present appellant in the Tribunal in respect to award including accrued interest and cost may be permitted to be withdrawn by the original claimant on furnishing appropriate security to the satisfaction of the Tribunal.

5. Subject to above stated observation and direction stated hereinabove, appeal stands dispossed of as rejected with no order as to costs. Direct service is permitted.

(A.K.Trivedi,J.)

(vipul)